

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 28 – HB 68

March 25, 2013

**SUMMARY OF ORIGINAL BILL:** Requires a court to take into consideration a parent's mental health status in a child custody proceeding and to consider any diagnosis or treatment programs of treating medical care providers regarding a parent's mental health in order to determine what parenting arrangements would be in the best interest of the child. Subjects the medical records, including mental health records, of any parent who has been evaluated, diagnosed, or treated for mental health status to discovery pursuant to the provisions of the bill and the rules of civil procedure. A court is authorized to issue, under specified conditions, a qualified protective order allowing the petitioning parent and the parent's attorney to obtain protected health information from records or depositions with treating healthcare providers. Any health care records of any parent who has been involuntarily committed for mental health treatment are required to be provided only under seal to the court and the opposing parent, on motion and if no proceeding is pending by certified mail. A parent with a diagnosed mental illness is required to disclose under seal the existence of the diagnosis to the court and an adverse party. The diagnosed parent is also required to file an updated status report and supporting medical records, at least annually, under seal to the court. If a parent waives parenting time or agrees only to have supervised visitation, then the parent may request that the court waive these disclosure requirements.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - \$8,100/FY13-14/DMHSAS  
\$16,300/FY14-15 and Subsequent Years/DMHSAS

Increase State Expenditures - \$11,500/FY13-14/DMHSAS  
\$23,100/FY14-15 and Subsequent Years/DMHSAS

**SUMMARY OF AMENDMENT (004815):** Authorizes a court to order an examination of a party to a custody determination regarding a minor child pursuant to Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party pursuant to Tenn. Code Ann. § 33-3-105(3). The court order required by Tenn. Code Ann. § 33-3-105(3) shall contain a qualified protective order that, at a minimum, expressly limits the dissemination of confidential protected mental health information for the purpose of litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

### **NOT SIGNIFICANT**

Assumptions for the bill as amended:

- Tenn. Code Ann. § 36-6-106(a)(5) currently requires a court to consider the mental health of the parent or caregiver, as applicable. According to the Administrative Office of the Courts, the bill will have no impact on the caseloads of state trial courts, general sessions courts with domestic relations jurisdiction, or juvenile courts.
- According to the Department of Health, the bill will not impact programs or operations of the Department. The fiscal impact of the bill on the Department will be not significant.
- According to the Department of Mental Health and Substance Abuse Services, the bill will not significantly increase records requests and any increase in expenditures can be accommodated within existing resources without an increased appropriation or reduced reversion.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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